



# STATE OF MONTANA REQUEST FOR PROPOSAL (RFP)

<b>RFP Number:</b> MSF 30	<b>RFP Title:</b> DURABLE MEDICAL EQUIPMENT
<b>RFP Response Due Date and Time:</b> Open	<b>Number of Pages:</b> 23

## ISSUING AGENCY INFORMATION

<b>Procurement Officer:</b> Bridget McGregor	<b>Issue Date:</b> May 15, 2007
Montana State Fund PO Box 4759 Helena, MT 59604-4759	Phone: (406) 495-5277 Fax: (406) 495-5023 TTY Users, Dial 711  Website: <a href="http://www.mt.gov/doa/gsd">http://www.mt.gov/doa/gsd</a>

## INSTRUCTIONS TO CONTRACTORS

<b>Return Response to:</b>  Montana State Fund 855 Front Street Helena, Montana 59601	<b>Mark Face of Envelope/Package:</b>  RFP Number: MSF 30 RFP Response Due Date: Open  <b>Special Instructions:</b>
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**IMPORTANT: SEE STANDARD TERMS AND CONDITIONS**

## CONTRACTORS MUST COMPLETE THE FOLLOWING

<b>Contractor Name/Address:</b>	<b>Authorized Contractor Signatory:</b>  (Please print name and sign in ink)
<b>Contractor Phone Number:</b>	<b>Contractor FAX Number:</b>

<b>Contractor E-mail Address:</b>
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**CONTRACTORS MUST RETURN THIS COVER SHEET WITH RFP RESPONSE**

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<b>SCHEDULE OF EVENTS</b>
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**EVENT****DATE**

**RFP Issue Date..... May 15, 2007**

**RFP Response Due Date ..... Open**

**Service Start Date ..... July 1, 2007**

## SECTION 1: PROJECT OVERVIEW AND INSTRUCTIONS

### 1.0 PROJECT OVERVIEW

The Montana State Fund, hereinafter referred to as "MSF", is pleased to invite you to submit a response for services to injured employees suffering from injuries or occupational diseases under the Workers' Compensation Act of Montana through preferred provider contracts with Durable Medical Equipment suppliers. Respondents may submit a proposal for any or all of the services listed below:

- Durable Medical Equipment
- Oxygen Equipment and Supplies
- Bone Growth Stimulators
- TENS Equipment & Supplies
- Orthotics & Prosthetics Supplies & Services

These will be nonexclusive contracts. MSF may enter into contracts with more than one Contractor, and may enter into contracts with additional Contractors at any time. MSF does not guarantee any number of referrals under this agreement. Services may begin after the issue date of this RFP.

### 1.1 CONTRACT TERM

The contract term is for a period beginning on July 1, 2007 and ending on June 30, 2008. Renewals of the contract, by mutual agreement of both parties, may be made at one-year intervals, or any interval that is advantageous to MSF. The contract, including any renewals, may not exceed a total of seven years, at the option of MSF. Additional durable medical equipment providers may enter into contracts with MSF at any time, subject to review of qualifications and agreement to the required terms contained in this proposal.

### 1.2 SINGLE POINT OF CONTACT

From the date this Request for Proposal (RFP) is issued until a contractor is selected and the selection is announced by the procurement officer, **contractors are not allowed to communicate with any MSF staff or officials regarding this procurement, except at the direction of Bridget McGregor**, the procurement officer in charge of the solicitation. Any unauthorized contact may disqualify the contractor from further consideration. Contact information for the single point of contact is as follows:

Procurement Officer: **Bridget McGregor**  
Address: **Montana State Fund, PO Box 4759, Helena, MT 59604-4759**  
Telephone Number: **(406) 495-5277**  
Fax Number: **(406) 495-5023**  
E-mail Address: **bmcgregor@mt.gov**

### 1.3 REQUIRED REVIEW

Contractors should carefully review the instructions, mandatory requirements, specifications, and contract set out in this RFP and promptly notify the procurement officer identified above in writing or via e-mail of any ambiguity, inconsistency, unduly restrictive specifications, or error which they discover upon examination of this RFP. This should include any terms or requirements within the RFP that either preclude the Contractor

from responding to the RFP or add unnecessary cost. This notification must be accompanied by an explanation and suggested modification. MSF will make any final determination of changes to the RFP.

## **1.4 GENERAL REQUIREMENTS**

**1.4.1 Acceptance of Contract.** By submitting a response to this RFP, Contractor agrees to acceptance of the draft contract as set out in Appendix A of this RFP.

**1.4.2 Resulting Contract.** This RFP and any addenda, and the Contractor's RFP response, including any amendments, shall be included in any resulting contract. MSF's contract, attached as Appendix A, contains the contract terms and conditions which will form the contract between MSF and the Contractor. In the event of a dispute as to the duties and responsibilities of the parties under this contract, the contract, along with any attachments prepared by MSF, will govern in the same order of precedence as listed in the contract.

**1.4.3 Mandatory Requirements.** To be eligible for consideration, a Contractor *must* meet the intent of all mandatory requirements. MSF will determine whether a Contractor's RFP response complies with the intent of the requirements. RFP responses that do not meet the full intent of all requirements listed in this RFP may be deemed non-responsive.

**1.4.4 Understanding of Specifications and Requirements.** By submitting a response to this RFP, Contractor agrees to an understanding of and compliance with the specifications and requirements described in this RFP.

**1.4.5 Prime Contractor/Subcontractors.** MSF reserves the right to approve all subcontractors. The Contractor shall be responsible to MSF for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by the Contractor. Further, nothing contained within this document or any contract documents created as a result of any contract awards derived from this RFP shall create any contractual relationships between any subcontractor and MSF.

**1.4.6 Contractor's Signature.** Appendix B must be signed in ink by an individual authorized to legally bind the business submitting the response. The Contractor's signature on Appendix B in response to this RFP guarantees that the offer has been established without collusion and without effort to preclude MSF from obtaining the best possible supply or service. Proof of authority of the person signing the RFP response must be furnished upon request.

## **SECTION 2: RFP STANDARD INFORMATION**

### **2.0 AUTHORITY**

This RFP is issued under the authority of section 39-71-2315, MCA (Montana Code Annotated). The nonexclusive RFP process is a procurement option allowing the award to be based on stated requirements. No other requirements, other than as outlined in the RFP, will be used.

### **2.1 CONTRACTOR COMPETITION**

MSF encourages free and open competition among contractors. Whenever possible, MSF will design specifications, proposal requests, and conditions to accomplish this objective, consistent with the necessity to satisfy MSF's need to procure technically sound, cost-effective services and supplies.

### **2.2 RECEIPT OF RESPONSES AND PUBLIC INSPECTION**

**2.2.1 Public Information.** All information received in response to this RFP, including copyrighted material, is deemed public information and will be made available for public viewing and copying shortly after the time for receipt of responses has passed with the following three exceptions: (1) bona fide trade secrets meeting the requirements of the Uniform Trade Secrets Act, Title 30, chapter 14, part 4, MCA, that have been properly marked, separated, and documented; (2) matters involving individual safety as determined by MSF; and (3) other constitutional protections.

**2.2.2 Procurement Officer Review of Responses.** Upon opening the responses received in response to this RFP, the procurement officer in charge of the solicitation will review the responses and separate out any information that meets the referenced exceptions in Section 2.2.1 above, providing the following conditions have been met:

- Confidential information is clearly marked and separated from the rest of the response.
- The response does not contain confidential material in the cost or price section.
- An affidavit from a Contractor's legal counsel attesting to and explaining the validity of the trade secret claim as set out in Title 30, chapter 14, part 4, MCA, is attached to each response containing trade secrets. Counsel must use the State of Montana "Affidavit for Trade Secret Confidentiality" form in requesting the trade secret claim. This affidavit form is available on the General Services Division's website at: <http://www.mt.gov/doa/gsd/procurement/forms.asp> or by calling (406) 444-2575.

Information separated out under this process will be available for review only by the procurement officer, the evaluator/evaluation committee members, and limited other designees. Contractors must be prepared to pay all legal costs and fees associated with defending a claim for confidentiality in the event of a "right to know" (open records) request from another party.

### **2.3 CLASSIFICATION OF RESPONSES**

**2.3.1 Classification of Responses as Responsive or Nonresponsive.** All responses will initially be classified as either "responsive" or "non-responsive". Responses may be found nonresponsive at any time during the procurement process if any of the required information is not provided; the submitted price is found to be excessive or inadequate as measured by criteria stated in the RFP; or the response is not within the plans and specifications described and required in the RFP. If a response is found to be nonresponsive, it will not be considered further.

**2.3.2 Determination of Responsibility.** The procurement officer will determine whether a contractor has met the standards of responsibility. Such a determination may be made at any time during the procurement process if information surfaces that would result in a determination of nonresponsibility. If a contractor is found nonresponsible, the determination must be in writing, made a part of the procurement file and mailed to the affected contractor.

**2.3.3 Contract Award.** Contract award, if any, will be made to any contractor who meets the requirements of this RFP, and provides all required documents, and successfully completes contract negotiation. A formal contract utilizing the draft contract attached as Appendix A will be executed by all parties.

## **2.4 MSF'S RIGHTS RESERVED**

While MSF has every intention to award a contract as a result of this RFP, issuance of the RFP in no way constitutes a commitment by MSF to award and execute a contract. Upon a determination such actions would be in its best interest, MSF, in its sole discretion, reserves the right to:

- cancel or terminate this RFP;
- reject any or all responses received in response to this RFP;
- waive any undesirable, inconsequential, or inconsistent provisions of this RFP which would not have significant impact on any response;
- not award if it is in the best interest of MSF not to proceed with contract execution; or
- if awarded, terminate any contract if MSF determines adequate state funds are not available.

## **SECTION 3: SCOPE OF SERVICES**

### **3.0 DURABLE MEDICAL EQUIPMENT**

Please refer to Appendix A – Contract for scope of services.

## **SECTION 4: CONTRACTOR QUALIFICATIONS/INFORMATIONAL REQUIREMENTS**

### **4.0 MSF'S RIGHT TO INVESTIGATE AND REJECT**

MSF may make such investigations as deemed necessary to determine the ability of the Contractor to provide the supplies and/or perform the services specified. MSF reserves the right to reject any response if the evidence submitted by, or investigation of, the Contractor fails to satisfy MSF that the Contractor is properly qualified to carry out the obligations of the contract.

### **4.1 CONTRACTOR INSURANCE REQUIREMENTS**

The Contractor shall maintain for the duration of the contract, at its cost, primary insurance coverage against claims for injuries to persons or damages to property including contractual liability, which may arise from work performed under this contract. This insurance shall cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents, representatives, assigns, or servants.

At contract execution, the Contractor must provide a certificate for Commercial General Liability coverage, to include bodily injury, personal injury, and property damage with combined single limits of \$1,000,000 per claim, and \$2,000,000 aggregate per year, from an insurer with a Best's Rating of no less than A-.

The Contractor must provide a certificate for Professional Liability Insurance with combined single limits of not less than \$1,000,000 per occurrence, with a \$3,000,000 aggregate from an insurer with a Best's Rating of no less than A-.

### **4.2 COMPLIANCE WITH WORKERS' COMPENSATION ACT**

The Contractor is required to supply MSF with proof of compliance with the Montana Workers' Compensation Act while performing work for MSF. (Mont. Code Ann. §§ 39-71-120, 39-71-401, and 39-71-405.) Neither the Contractor nor its employees are employees of MSF. The proof of insurance/exemption must be in the form of workers' compensation insurance, an independent contractor exemption, or documentation of corporate officer status and must be received by MSF before contract will be executed, and must be kept current for the entire term of the contract.



## **SECTION 5: FEES AND PAYMENT**

Please see Appendix A – Contract for Fees and Payment

## **APPENDIX A - CONTRACT**

### **CONTRACT FOR SERVICES, PREFERRED PROVIDER AGREEMENT DURABLE MEDICAL EQUIPMENT OXYGEN EQUIPMENT AND SUPPLIES BONE GROWTH STIMULATORS TENS EQUIPMENT & SUPPLIES ORTHOTICS & PROSTHETICS**

**Contract ID Number - «CONTRACT\_ID»**

This agreement is made by and between **MONTANA STATE FUND**, hereinafter MSF, 5 855 Front Street, Helena, Montana 59601, and «COMPANY\_NAME», «Address\_One», «City», «State» «ZIP» referred to herein as Contractor .

#### **CONTRACTOR MUST CHECK WHICH SERVICES ARE TO BE PROVIDED UNDER THIS CONTRACT.**

- ☐ **Oxygen Equipment and Supplies**
- ☐ **Durable Medical Equipment**
- ☐ **Bone Growth Stimulators**
- ☐ **TENS Equipment & Supplies**
- ☐ **Orthotics & Prosthetics Supplies & Services**

This is a non-exclusive agreement. MSF may enter into contracts with more than one Contractor, and may enter into contracts with additional Contractors at any time. Under this agreement there is no guarantee of the number of referrals that will be made to the Contractor.

This contract includes the term of this agreement, the RFP and any addenda, and the RFP response including any amendments (Appendix B). They govern in order of precedence as listed.

#### **SECTION 1 PURPOSE**

The purpose of this agreement is for provision of products, equipment and services through preferred provider contracts to injured employees suffering from injuries or occupational diseases under the Workers' Compensation Act of Montana, whose claims have been accepted by MSF.

#### **SECTION 2 CONTRACT TERM/RENEWAL**

1. The term of the contract will be from July 1, 2007 to June 30, 2008.

2. The Contractor and MSF agree that the contract may, upon mutual agreement, be extended after the initial term in annual increments up to a total of seven (7) years. Compensation sections of this contract including, but not limited to, fee schedule, and fixed fees may need to be re-negotiated after the initial one-year term. This instrument shall not be effective until duly signed by all parties hereto.
3. In order to be eligible to renew its contract, the Contractor must be current with all information required herein in accordance with this contract.

### **SECTION 3**

#### **CONTRACTOR REQUIREMENTS**

1. Contractor must provide a copy of their license/certification to MSF indicating the ability to conduct business. A copy of the certificate must be provided to MSF prior to contract award.
2. Contractor must retain records that fully disclose the extent and nature of services provided for each referred injured employee.
3. All services, equipment and related supplies must have a therapeutic use, ordered by a treating physician as part of prescribed treatment, and be essential for carrying out the treatment plan for primary medical services. A treating physician is defined as:

(37) “Treating physician” means a person who is primarily responsible for the treatment of a worker’s compensable injury and is:

- (a) a physician licensed by the state of Montana under Title 37, chapter 3, and has admitting privileges to practice in one or more hospitals, if any, in the area where the physician is located;
- (b) a chiropractor licensed by the state of Montana under Title 37, chapter 12;
- (c) a physician assistant-certified licensed by the state of Montana under Title 37, chapter 20, if there is not a physician, as defined in subsection (36)(a), in the area where the physician assistant-certified is located;
- (d) an osteopath licensed by the state of Montana under Title 37, chapter 5;
- (e) a dentist licensed by the state of Montana under Title 37, chapter 4;
- (f) for an injured worker residing out of state or upon approval of the insurer, a treating physician defined in subsections (36)(a) through (36)(e) who is licensed or certified in another state; or
- (g) an advanced practice registered nurse licensed by the state of Montana under Title 37, chapter 8.

4. Contractor must accept MSF payment as payment in full for services rendered and not charge an injured employee additional fees.
5. Any information related to the injured employee will remain confidential and will not be disclosed to third parties without the written permission of MSF or the injured employee.
6. Detailed specifications of products, equipment or services provided must be presented with billing in order for payment to be made. Illegible notes will be returned unpaid for clarification.
7. Contractor will designate a representative who will be available as needed for business review and provide a phone number and e-mail address for that representative.
8. Contractor must comply with applicable provisions of the Workers’ Compensation Act. Contractor will comply with the decision in *Thompson v. State of Montana*, 2005 MTWCC 53.

**SECTION 4**  
**GENERAL TERMS OF PAYMENT\***

1. All bills must be submitted on CMS 1500 or UB92 forms with HCPCS codes to indicate procedures/supplies, and ICD-9 codes to indicate diagnosis. No payment will be made unless billing is properly coded and submitted in accordance with Medicare billing standards. MSF reserves the right to perform periodic audits on amounts charged for specific procedure codes to ascertain that charges submitted do not exceed usual and customary costs, as determined by a review of comparable suppliers.
  2. All rental charges paid will be applied toward the cost of purchase, not to exceed the usual purchase cost. If item is a rental item, start and end dates of the rental period must be specified.
  3. Mileage is not a reimbursable expense under this contract.
  4. No payment will be made for professional travel time for any service, including delivery of equipment, equipment technician visits, or respiratory therapist visits.
  5. MSF reserves the right to re-negotiate reimbursement rates based on extraordinary care circumstances. "Extraordinary Care" is defined as 1) extended physical or medical care of an injured employee that exceeds normal duties expected for the particular diagnosis or 2) extraordinary travel circumstances.
  6. Reimbursement of shipping charges will be allowed only on initial purchases. Freight/shipping charges will not be reimbursed for rental items.
  7. Neither MSF nor the injured employee will be responsible for freight/shipping charges for any equipment that must be returned for modifications or the freight/shipping charges for loaned or rented equipment.
  8. Contractor must provide a completed W-9.
- \* **See specific payment terms under Scope of Services.**

**SECTION 5**  
**SCOPE OF SERVICES: OXYGEN EQUIPMENT AND SUPPLIES**

1. Initial referrals for oxygen equipment and related supplies will be made to Contractors serving the geographic area in which the injured employee resides. Geographic area is defined as the area in which the Contractor maintains an office at which services and maintenance/supplies can be obtained.
2. Reimbursement for oxygen equipment and supplies will be paid to Contractors at the amount designated in the Medicare Fee Schedule plus 15%, or at the Contractor's usual rate, not to exceed the amount designated in the Medicare Fee Schedule plus 15%. Any item not designated in the Medicare Fee Schedule will be reimbursed at 80% of usual and customary charges.
3. Any oxygen equipment/supplies with a purchase price more than \$500.00 must be pre-authorized by a MSF claim examiner in writing.
4. Contractor must provide a copy of the signed and dated medical prescription for the provision of oxygen. Prescriptions for oxygen shall include the liter flow per minute, whether continuous use is

required or the hours of use per day, the recipient's PO2 or oxygen saturation blood test(s) results, and whether a stationary and/or portable system is used.

5. The Contractor must be available to provide service and/or supplies 24 hours per day, 7 days per week.
6. The Contractor will provide at least one visit monthly to the injured employee by a respiratory therapist and an equipment supply technician to assess the injured employee's respiratory status and to maintain the equipment.
7. The monthly rental charge will include the following products and services: oxygen refills, respiratory therapist visit, equipment technician visit, and all professional travel time and mileage.
8. The Contractor will provide for the trial use of equipment to determine if it is suitable for the injured employee. Equipment which is not suitable for the injured employee will be returned at the Contractor's expense and payment will be limited to the rental for the period the equipment was used.
9. The Contractor will grant 80% credit for items removed from oxygen supply equipment when modifications to oxygen supply equipment are made.

#### **SCOPE OF SERVICES: DURABLE MEDICAL EQUIPMENT**

1. Initial referrals for durable medical equipment will be made to Contractors serving the geographic area in which the injured employee resides. Geographic area is defined as the area in which the Contractor maintains an office at which services and maintenance for supplies can be obtained.
2. Reimbursement for durable medical equipment will be paid at the amount designated in the Medicare Fee Schedule plus 15%, or at the Contractor's usual rate, not to exceed the amount designated in the Medicare Fee Schedule plus 15%. Any item not designated in the Medicare Fee Schedule will be reimbursed at 80% of usual and customary charges.
3. The Contractor must provide a copy of the signed and dated medical prescription for all equipment.
4. Durable medical equipment related to secondary medical services must be pre-authorized by MSF. Secondary medical services are defined as:

(30)(a) "Secondary medical services" means those medical services or appliances that are considered not medically necessary for medical stability. The services and appliances include but are not limited to spas or hot tubs, work hardening, physical restoration programs and other restoration programs designed to address disability and not impairment or equipment offered by individuals, clinics, groups, hospitals, or rehabilitation facilities.

(b)(i) As used in this subsection (30), "disability means a condition in which a worker's ability to engage in gainful employment is diminished as a result of physical restrictions resulting from an injury. The restrictions may be combined with factors, such as the worker's age, education, work history, and other factors that affect the worker's ability to engage in gainful employment.

(ii) Disability does not mean a purely medical condition.

5. Any durable medical equipment with a purchase price more than \$500.00 must be pre-authorized by a MSF claim examiner in writing.

6. The Contractor will provide loaner equipment at no charge for any durable medical equipment while it is being modified or repaired.
7. Wheelchairs will be replaced no more than once every five (5) years, unless it is medically determined that earlier replacement is required because the current wheelchair is causing serious health/medical problems or because of a significant change in the injured employee's medical condition.

### **SCOPE OF SERVICES: BONE GROWTH STIMULATORS**

1. Bone Growth Stimulator Preferred Providers will be reimbursed at 80% of usual and customary charges. All Bone Growth Stimulator billing submitted should be priced at the full cost from the Contractor (usual and customary).
2. All bone growth stimulators must be pre-authorized by a MSF claim examiner in writing. The Contractor must provide a copy of the signed and dated medical prescription for any bone growth stimulator.
3. All bone growth stimulator prescriptions, unless otherwise specified by the treating physician, will be filled with a non-invasive device rather than an implanted bone growth stimulator.
4. The non-invasive method of electrical bone growth stimulation is considered medically necessary for the treatment of fracture nonunions when ALL of the following criteria are met:
  - a. The nonunion is located in a long bone (including; clavicle, humerus, radius, ulna, femur, tibia, fibula, metacarpal, and metatarsal bones).
  - b. Serial multiview imaging studies (2 sets, 90 days apart) confirm fracture healing has ceased.
  - c. The fracture gap is 1 centimeter or less.
  - d. There is demonstrated proof of skeletal maturity or the patient is 20 years of age or older.
5. The non-invasive or invasive methods of electrical bone stimulation are considered medically necessary as an adjunct to spinal fusion surgery for individual's with one or more of the following risk factors:
  - a. Fusion to be performed at more than one level.
  - b. Previous unsuccessful spinal fusion attempts.
  - c. Grade II, or worse, spondylolisthesis.
  - d. Current, or very recent, smoking habit.
  - e. Osteoporosis, diabetes, or other metabolic diseases which influence bone healing
  - f. Renal disease
  - g. Obesity
  - h. Alcoholism
6. Ultrasound bone growth stimulation is considered medically necessary when any of the following criteria are met:
  - a. Fresh (< 7 days), closed or Grade I open, tibial diaphyseal fractures.
  - b. Fresh (< 7 days), closed fractures of the distal radius (Colles' fracture).
  - c. Nonunion of bones other than the skull or vertebrae in skeletally mature patients, excluding those that are related to malignancy, when the fracture is equal to or greater than 3 months from the date of injury or initial treatment, and when there is documentation that the healing has ceased or is not progressing as evidenced by two sequential radiographs > 90 days apart.

7. The Contractor must be able to provide a system, free of charge, for monitoring wear time and injured employee compliance with recommended wear time.

### **SCOPE OF SERVICES: TENS EQUIPMENT & SUPPLIES**

1. Contractor must provide a copy of the signed and dated medical prescription for all TENS/electro-medical devices, with annual renewals provided.
2. All TENS/electro-medical equipment and related supplies must comply with current FDA regulations. Contractor is responsible for independently complying with these regulations and advising MSF of any changes in equipment, retrofitting of equipment currently in use, or replacement of out-of-date equipment.
3. Contractor will be reimbursed at usual and customary rates, not to exceed the amount established by MSF for each associated HCPC code. See Appendix A for the TENS schedule of codes and associated reimbursement. Any TENS-related item not designated in the MSF fee schedule will be reimbursed at 80% of the usual and customary charges, as approved by the MSF claim examiner.
4. The use of any miscellaneous code will be denied without prior authorization from the Medical Claim and Contract Specialist.
5. Any TENS/electro-medical equipment with a purchase price more than \$300.00 must be pre-authorized by the MSF claim examiner in writing.
6. Items included as part of the rental or purchase price of any TENS unit: carrying case, lead wires, batteries, and a battery charger, with future replacement batteries and lead wires.
7. All TENS orders, unless otherwise specified by the treating physician, will be filled with a basic device.
8. The Contractor will conduct initial follow-up interviews with injured employees to ascertain delivery of equipment and comprehension of proper usage.
9. The Contractor will respond to all injured employee questions regarding the equipment and initiate replacement of damaged units and supplies.
10. The Contractor's customer service shall consist of:
  - a. initial introductory contact and instruction by a certified clinician with the injured employee prior to and after shipment of the device,
  - b. follow-up contact within the first thirty (30) days of initial shipment to ensure appropriate usage,
  - c. monitor monthly usage of device and supplies,
  - d. notify MSF of any non-compliance in the use of the device or non-responsiveness to contact attempts for 60 days, and
  - e. notify injured employees of their non-compliant status and terminate supplies accordingly, with a last month's supply provided.

### **SCOPE OF SERVICES: ORTHOTICS & PROSTHETICS**

1. Reimbursement will be based on the codes submitted. Payment will be made according to the Medicare fee schedule plus 15%. Reimbursement for codes not specified by the Medicare fee schedule will be made at 80% of usual and customary fees and charges.

2. Any item with a rental, purchase, or replacement price more than \$500.00 must be pre-authorized in writing by the MSF claim examiner.
3. Repair and adjustment work will be paid on an hourly rate, based on the Medicare reimbursement rate. The vendor is responsible for obtaining pre-authorization from the MSF claim examiner for repair work prior to commencing this work.
4. Replacement of orthotics and prosthetics must be pre-authorized by the MSF claim examiner.
5. No additional reimbursement will be allowed for billing submitted with CPT codes that are considered inclusive when performed in conjunction with other services or supplies. Examples of this are 1) CPT codes 95851 and 95852, range of motion, which are considered inclusive when done in conjunction with the selection, design, alteration or fabrication of orthotics or prosthetics; and 2) CPT code 97116, gait analysis, which includes stair climbing, or motion analysis testing, which is considered inclusive of the charge of an orthotic. Examples given may not represent all possible exclusions. The vendor may contact MSF for verification of appropriate billing procedures.

## **SECTION 6**

### **WARRANTIES, REPAIRS, MAINTENANCE**

A warranty, equivalent to the manufacturer's warranty, on all products, equipment and services with a value of \$500.00 or greater must be provided to MSF. The warranty will include parts, labor, pick-up, and delivery. No dealer preparation charges will be allowed, unless written prior authorization from MSF is obtained. The Contractor will arrange for loaner equipment to be provided at no cost while warranty repairs are being made. The Contractor agrees that all purchased items will be new unless agreed to otherwise by MSF.

A warranty will be in effect for a minimum of 90 days for all repairs and adjustments unless it is documented that the defect was patient-caused. Any warranty that is provided by the manufacturer will be passed on to MSF.

The Contractor warrants that all products and services delivered pursuant to this contract will be free of defects and will meet the specific requirements prescribed by the treating physician. The Contractor shall correct or replace all noticeable defects in the Contractor's products or services free of charge. Inspection or acceptance of any product or service shall not act as a waiver of this warranty.

The Contractor will provide or arrange for all necessary repairs/maintenance for all supplies required by injured employees.

## **SECTION 7**

### **REPRESENTATIVE LIAISON**

1. MSF has designated Bridget S. McGregor, Medical Team Leader, as its Representative (Contract Officer) for purposes of this particular agreement.

Phone: 406-495-5277

E-mail: bmcgregor@montanastatefund.com



2. The Contractor has designated \_\_\_\_\_ as its Representative (Contract Officer) for the Contractor for purposes of this particular agreement.

Phone: \_\_\_\_\_

E-mail: \_\_\_\_\_

3. The Contract Officer for each party shall act as the liaison for communication between the insurer and the provider after the contract has been enacted. If either party designates someone other than the named Representative as the communication liaison, they shall notify the other party in writing within five (5) working days of the change.

## **SECTION 8**

### **ACCESS TO RECORDS -- RETENTION OF RECORDS**

The Contractor agrees to provide the department, Legislative Auditor, or their authorized agents, access to any records necessary to determine contract compliance (Mont. Code Ann. § 18-1-118). The Contractor agrees to create and retain records supporting the services rendered or supplies delivered for a period of three years after either the completion date of the contract or the conclusion of any claim, litigation, or exception relating to the contract taken by the State of Montana or third party.

## **SECTION 9**

### **ASSIGNMENT AND TRANSFER**

Neither MSF nor the Contractor shall subcontract or assign its obligations under this contract without prior written consent of the other party. If subcontracting or assignment is approved, all requirements of the contract shall be binding to the subcontractor or assignee.

## **SECTION 10**

### **REGISTRATION WITH THE SECRETARY OF STATE**

Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are incorporated in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with sections 35-1-1026 and 35-8-1001, MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at <http://sos.mt.gov>.

## **SECTION 11**

### **HOLD HARMLESS/INDEMNIFICATION**

The Contractor agrees to protect, defend, and save the State of Montana, MSF, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the Contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from

the acts or omissions of the Contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of MSF, under this agreement.

## **SECTION 12**

### **ADVERTISING/NEWS RELEASES**

The Contractor shall not advertise or share information concerning this contract in any form, or with any media without prior written consent from MSF. This does not prohibit the Contractor from sharing contract information needed for provider relationships or efforts needed to carry out other functions described in this contract.

Upon execution of this agreement, the Contractor may issue a press release announcing said execution, provided MSF has first reviewed said release for accuracy and content. MSF shall give approval/disapproval. Approval of the press release may not be unreasonably withheld.

## **SECTION 13**

### **COMPLIANCE WITH LAWS**

The Contractor must, in performance of work under the contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the Contractor subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, the Contractor agrees that the hiring of persons to perform the contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract.

## **SECTION 14**

### **COMPLIANCE WITH WORKERS' COMPENSATION ACT**

The Contractor is required to supply MSF with proof of compliance with the Montana Workers' Compensation Act while performing work for MSF. (Mont. Code Ann. §§ 39-71-401, 39-71-405, and 39-71-417.) Neither the Contractor nor its employees are employees of the MSF. The proof of insurance/exemption must be in the form of workers' compensation insurance, an independent contractor exemption, or documentation of corporate officer status and must be received by MSF before contract will be executed, and must be kept current for the entire term of the contract.

**CONTRACTS WILL NOT BE EXECUTED WITH VENDORS WHO FAIL TO PROVIDE THE REQUIRED DOCUMENTATION.**

Coverage may be provided through a private carrier or through the State Compensation Insurance Fund (406) 495-5000. An exemption can be requested through the Department of Labor and Industry, Employment Relations Division (406) 444-1446. Corporate officers must provide documentation of their exempt status.

## **SECTION 15**

### **CONTRACT TERMINATION**

1. MSF or the Contractor, with 30 days written notice to the other, may at any time during the term of this contract, terminate this contract with cause, or if the other party:

- a. fails to perform its contractual duties or responsibilities; or
  - b. does not meet expected performance levels; or
  - c. does not meet time frames to improve performance levels as developed by MSF and the Contractor.
2. Either party may cancel this contract without cause with 30 days written notice.
3. MSF, or the Contractor, may terminate this contract at any time if either entity ceases to exist.
4. In the event of contract termination/cancellation, the Contractor will transfer all records related to a referred claim to either MSF or a new Contractor, and neither MSF nor the new Contractor may be charged for the transfer.

## **SECTION 16**

### **MODIFICATION OF CONTRACT**

1. No modification of this agreement shall be valid or binding unless such modification is in writing, duly dated, and executed by all parties to this original agreement.
2. If any portion of this contract becomes void by order of a court of law, all other sections of this contract remain in place with full force and effect.

## **SECTION 17**

### **INSURANCE REQUIREMENTS**

1. The Contractor shall be required to procure and maintain for the duration of the contract, at its cost and expense, primary insurance coverage for injuries to persons or damages to property including contractual liability which may arise from or in connection with work performed by, or under general supervision of, the Contractor, his agents, representatives, employees, and subcontractors under this agreement. This insurance shall cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents, representatives, assigns, or servants.
2. The Contractor must provide a certificate for commercial general liability, to include bodily injury, personal injury, property damage and automobile liability insurance with combined single limits of not less than \$1,000,000 per occurrence, with a \$2,000,000 aggregate from an insurer with a Best's Rating of no less than A-.
3. The Contractor must also provide a certificate for professional liability insurance with combined single limits of not less than \$1,000,000 per occurrence, with a \$3,000,000 annual aggregate.
4. The Contractor must provide a certificate of insurance to MSF before contract will be executed. The certificate must provide that the Contractor will give MSF 30 days advance notice of cancellation.

CONTRACTS WILL NOT BE EXECUTED WITH VENDORS WHO FAIL TO PROVIDE THE REQUIRED DOCUMENTATION.

## **SECTION 18**

### **LIMITS OF AGREEMENT**

1. This instrument contains the entire Agreement between the parties, and no statements, promises of inducements made by either party, or agents of either party, which are not contained in the written Agreement shall be valid or binding. This Agreement may not be enlarged, modified or altered except as provided in Section 16, Modifications of this contract.
2. The request for proposal issued by MSF and the proposal of the Contractor are both herein incorporated and made part of this contract. If there are any discrepancies between the RFP, the Contractor Proposal, and this Contract, this Contract governs.

## **SECTION 19**

### **SUCCESSORS AND ASSIGNS**

This Agreement shall be binding on all successors and assigns of the Contractor, including successors in interest.

## **SECTION 20**

### **VENUE**

The Laws of Montana govern this contract. The parties agree that any litigation concerning this bid, proposal, or subsequent contract, must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its costs and attorney fees. (Ref: 18-1-401, MCA).

## **SECTION 21**

### **FAILURE OF ENFORCEMENT IS NOT A WAIVER**

Failure of MSF to enforce any of the provisions of this contract does not constitute a waiver of that provision or affect any part of this contract, or the right of MSF to later enforce that provision.

## **SECTION 22**

### **BEST EFFORTS OF CONTRACTOR**

1. Contractor agrees that it will at all times faithfully, industriously, and to the best of its ability, experience and talents, perform all of the duties and obligations that may be required of it pursuant to the express terms of the agreement.
2. Contractor agrees to conduct itself so as not to diminish the good will and reputation of MSF and to abide by all applicable laws, rules, and regulations.
3. Contractor further agrees to comply with, abide by, and be bound by the terms, conditions and covenants of this agreement.

**SECTION 23**  
**MSF ASSISTANCE**

MSF shall not supply Contractor with any assistance in the form of personnel, office equipment, or other similar and related items.

IN WITNESS WHEREOF, the parties have executed THIS AGREEMENT the day and year first below written.

«COMPANY\_NAME»

**MONTANA STATE FUND**

By: \_\_\_\_\_

By: \_\_\_\_\_

PETER STRAUSS  
VP Insurance Operations Support

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Approved for Legal Content by:**

\_\_\_\_\_  
NANCY BUTLER  
General Counsel

Date: \_\_\_\_\_

## APPENDIX A

### TENS Equipment & Supplies

HCPC	ITEM	FY 08 CONTRACT RATE
A4556	Electrodes ( <b>per pair unit</b> ) **	\$12.14 <b>per pair unit</b>
A4557	Lead Wires (per pair unit)	No Charge
A4558	Conductive Gel / Paste	\$5.45 per container
A4595	Leads ( <b>2-lead unit per month</b> )	\$28.35 for <b>2-lead unit per month</b>
A4630	Battery	No Charge
E0730NU	TENS Unit - Purchase	\$370.56
E0730RR	TENS Unit - Rent	\$37.06/month up to amount of purchase price
E0731NU	Conductive Garment - Purchase	\$356.69
E0745NU	Neuromuscular Stimulator - Purchase	\$895.00
E0745RR	Neuromuscular Stimulator - Rent	\$89.50 per month up to amount of purchase limit
E1399RR	Interferential (IFFY II) – Rent	\$75.00 per month up to amount of purchase limit
E1399NU	Interferential (IFFY II) – Purchase	80% of usual customary charge

**Any item not listed in this appendix may not be reimbursable, and prior authorization by the Claim Examiner is recommended.**

**\*\*All charges must comply with HCPC billing standards, particularly those that stipulate charges on a per pair unit basis.**

## APPENDIX B - RESPONSE SHEET

### DURABLE MEDICAL EQUIPMENT PREFERRED PROVIDER

By signing below, it is agreed as follows:

1. That the Scope of Services can be provided by the Contractor.
2. That Contractor accepts the Montana State Fund's Contract terms.

Authorized Representative Signature:\_\_\_\_\_

Date:\_\_\_\_\_

Telephone Number:\_\_\_\_\_

Business Name (please print):\_\_\_\_\_

Address:\_\_\_\_\_

\_\_\_\_\_

E-mail address:\_\_\_\_\_